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## I N D E X

## DEFENSE WITNESS

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1           *THE COURT:* Good afternoon, counsel. Finally our  
2 schedules have meshed. Is the government prepared to proceed?

3           *MS. TAYLOR:* Yes, Your Honor, we are.

4           *THE COURT:* All right.

5           *MS. TAYLOR:* Your Honor, this is the case of *United*  
6 *States of America v. Jay Eugene Reed*, this court's Docket  
7 1:15-CR-193. Mr. Reed is present represented by Mr. Thornton.  
8 Your Honor, today is the time and place set for a sentencing  
9 hearing in Mr. Reed's case.

10           *THE COURT:* Mr. Thornton, I received your sentencing  
11 memo filed on Mr. Reed's behalf. I understand that you have  
12 read the presentence report and understand the calculations and  
13 have some comment and testimony to offer on those calculations.

14           *MR. THORNTON:* Not so much on the calculations  
15 themselves, Your Honor. We did have one objection to the  
16 presentence report guideline calculation, but it did not affect  
17 the eventual range. Even if we had -- the objection had been  
18 granted, it would not have affected the range. So we don't  
19 really have any objection to the calculation of the range, but  
20 we are hoping Your Honor will consider a variance in this  
21 matter.

22           *THE COURT:* Okay. So we'll work from the criminal  
23 history category one, offense level 46.

24           *MR. THORNTON:* Yes, Your Honor.

25           *THE COURT:* What do you wish to offer on your client's

1       behalf?

2               *MR. THORNTON:* Your Honor, the Jay Reed who sits here  
3 next to me -- you can stay there. That's all right. The Jay  
4 Reed who sits here next to me is not the same person who took  
5 these pictures. He's not the same person who was arrested in  
6 2015. And, in fact, he's not even the same person since 2015.

7               He's been in Dauphin County Prison and in Columbia  
8 County Prison for over three years at this point, and he  
9 suffered the hardships which we detailed in our motion for  
10 hardship consideration in the presentence report -- or the  
11 sentencing memorandum that we filed.

12              Your Honor, Jay Reed, since and even before his arrest  
13 on this matter, was starting to show signs that things were  
14 going wrong, that it wasn't really the Jay Reed who had lived  
15 his life without any real problems up until this occurred. His  
16 memory started failing, his health was failing. He seems to  
17 have what Dr. Silverman will call a progressive dementia.

18              In fact, Your Honor, Mr. Reed was hospitalized last  
19 week while he was at the Columbia County Prison. He was having  
20 some episodes which made the prison worried enough that they  
21 took him to the hospital and gave him some new medication, ran  
22 a lot of tests on him, and I think we're still awaiting the  
23 results of those tests.

24              He's not the same person today that he ever was.  
25 Fifty-four years of his life he lived without any hint that he

1 was ever interested in any kind of child or that he was a  
2 pedophile of any kind.

3 By the time that he finishes his sentence here -- and  
4 we ask Your Honor to give a sentence of no more than 15 years,  
5 the mandatory minimum -- he'll be 70 years old. He won't be a  
6 danger to others at that point, and he will have learned his  
7 lesson, which is rather stark for an individual who, as Your  
8 Honor noted, has a criminal history category of one.

9 There's no indication in his background or his history  
10 that he had any propensity to do anything like this. He never  
11 did anything like this before. None of these pictures were  
12 ever shared, distributed, taken to a chat room, put on the  
13 Internet. Nothing like that ever happened.

14 So the question really has to become, you know, why  
15 now? Why, at age 54, does this suddenly happen? The  
16 evaluation from Dr. Dattilio that was provided in the  
17 presentence report objections, I believe, or it might have been  
18 a conclusion with the exhibits to the sentencing memorandum,  
19 indicated that he's only a moderate risk to reoffend.

20 But Dr. Dattilio could not answer the question as to  
21 why, as to why, suddenly, there would be this switch in this  
22 man who, for his whole life, had been dedicated mostly to doing  
23 good things for others, including his family.

24 It's an atypical switch, a change that just doesn't  
25 seem to make sense. Dr. Silverman has some answers for that.

1 He doesn't have a definitive answer, but he has some --  
2 certainly some answers that help guide us in the right  
3 direction. And one of the significant answers is that his  
4 brain has been suffering from a lack of oxygen for years as a  
5 result of his sleep apnea.

6 Mr. Reed was just transferred yesterday from the  
7 Columbia County Prison to the Dauphin County Prison, and the  
8 prison allowed him to bring the CPAP machine with him from  
9 Columbia County that he has just had -- well, I guess he's had  
10 for about a year now. Is that right?

11 *THE DEFENDANT:* Um-hum.

12 *MR. THORNTON:* Up to that point, he hadn't had a CPAP  
13 machine, but we were lucky enough, through the work of  
14 Dr. Silverman, to be able to get a CPAP machine into the  
15 Columbia County Prison.

16 It's my understanding that the pictures were deleted  
17 from the phone, that there was no distribution, no chatting, no  
18 exchange, no intent to ever distribute. And, consequently, we  
19 suggest that that takes this case sort of out of the heartland  
20 of production and enticement cases where the purpose and the  
21 desire of the person doing it is to distribute it, to share it  
22 with others. We certainly don't have that.

23 This offense here is a combination of unfortunate  
24 access and a failure of Mr. Reed to be able to control or  
25 moderate his impulses. It's a confluence of a situation that

1 is very unlikely to ever occur again where he would find  
2 himself in a position where he would even be able to commit an  
3 offense like this.

4 Your Honor, Mr. Reed, two of the charges here against  
5 Mr. Reed are obstruction of justice charges, the last two  
6 charges. They obviously don't really drive the guidelines, but  
7 they're important to this case. And the obstruction of justice  
8 charges really come from the fact that Mr. Reed didn't  
9 understand what he was and was not allowed to do as a defendant  
10 in a crime.

11 He's never really been a defendant other than a DUI  
12 prosecution. And he wrote letters to the mom -- or the  
13 grandmother and was saying, you know, please, I didn't mean for  
14 anything to go wrong here and please don't prosecute me.  
15 Unfortunately, that turns out to be an obstruction of justice  
16 letter.

17 And the situation we found ourselves with the U.S.  
18 Attorney here, there were no deals to be made. We asked  
19 numerous times can we work anything out, and the answer was  
20 absolutely not.

21 So we had to plead straight up to everything that  
22 they -- all the charges they brought against him, and those are  
23 two of the charges, though we don't think that those really  
24 drive the guideline range or should drive Your Honor's decision  
25 here because it wasn't a true attempt to obstruct in that he

1 didn't threaten anybody or do anything like that.

2 Your Honor, we do have some witnesses to present  
3 today. We have Dr. Silverman, and we also have some family  
4 members. I was going to put Dr. Silverman on last just so he  
5 could hear what the family members had to say.

6 *THE COURT:* Okay.

7 *MR. THORNTON:* First, we would call -- we just have  
8 Jay's sister, Your Honor, Jay's sister, Deb Dallmann. Where  
9 would you like her?

10 *THE COURT:* Do you wish to have the witness sworn?

11 *MS. TAYLOR:* No, Your Honor, that's not necessary.

12 *THE COURT:* Okay. Right here is good.

13 *MR. THORNTON:* Could you tell us your name, please?

14 *MS. DALLMANN:* Deborah Dallmann.

15 *THE COURT:* Good afternoon.

16 *MS. DALLMANN:* Good afternoon.

17 *MR. THORNTON:* And, Ms. Dallmann, you wrote a letter  
18 that's included in my sentencing memorandum. Is that right?

19 *MS. DALLMANN:* Yes, I did.

20 *MR. THORNTON:* And I know Judge Kane has had a chance  
21 to see that letter.

22 *THE COURT:* It was a long letter.

23 *MS. DALLMANN:* Yes, it was. It came from the heart.

24 *MR. THORNTON:* And I assume Your Honor also had a  
25 chance to see the video that we put together from the family.



1           THE COURT: I did, I did. Your parents look like good  
2 people who are not in the greatest of health at this point.

3           MS. DALLMANN: No. My dad is here today.

4           MR. THORNTON: Jay's father was able to come today.

5           THE COURT: Oh, good. Okay.

6           MR. THORNTON: But he's not going to add anything  
7 today. Deb, could you just tell us a little bit about  
8 yourself? Where do you work?

9           MS. DALLMANN: I'm an attorney with the Legal Aid  
10 Society of Cleveland. I live in Cleveland.

11          MR. THORNTON: And you have something to say to the  
12 judge?

13          MS. DALLMANN: I did kind of abbreviate what I wrote  
14 to you, but I guess I should try to just make it brief, make it  
15 short.

16          As I said in my memo, my letter to you, I struggle  
17 with that, and I tried to think of a way to describe the  
18 character of my brother, the brother that I know for 50-some  
19 years, my brother.

20          And when you look at him today with the harshness of  
21 three years of county jail across his face, I want you to see,  
22 this is my brother (*displaying photograph*) with the easy smile  
23 and the sparkle in his eyes and who was always compassionate  
24 and caring, always.

25          He always helped. He helped me in many ways. I

1 suffer from anxiety attacks where I can't drive. He was a  
2 long-haul truck driver, and he was the only one that ever truly  
3 understood what I was going through. And he never judged. He  
4 gave me strength.

5 And he was always there to help my mom and dad. And  
6 as they age, he writes from his cell -- dad had a back  
7 operation, and he writes from his cell, If I was there, Dad, I  
8 would help you. And I know that he would because that is the  
9 brother that I know. That is the kind, caring, compassionate  
10 brother.

11 He sometimes didn't make the best financial decisions.  
12 Him and his ex-wife rescued cats for many, many years, and I  
13 recall one -- and this goes to his heart, in my mind. It was a  
14 rainy night in Texas, a truck stop, a poor little abandoned  
15 kitten, and what does he do? He takes it, even though, even  
16 though he's not allowed to have it in his truck. And he names  
17 her Angel as a tribute to the God that he knew led him to  
18 rescue that cat.

19 And that goes to our background, our foundation, how  
20 we were raised. My grandmother was a Christian, and she taught  
21 us from day one to do right and to love the Lord and to be  
22 faithful to God's words. And I know, I know my brother at  
23 heart is that Christian, and he has rededicated his life to God  
24 since in prison, even though he's been denied religious  
25 services in prison.

1           And he always thinks of others, even now. He never  
2 complains. He has not complained once to me, because, you  
3 know, when he calls me, he says, How's my sissy today? How's  
4 my favorite sister? Not complaining at all.

5           And he's helped other inmates. And what does that --  
6 what happens to him when he helps inmates? He's vulnerable,  
7 but yet he still does it.

8           When first housed at Dauphin County, his celly had  
9 only one pair of underwear, and Jay watched him wash that same  
10 pair of underwear every other day. What did Jay do? He bought  
11 him some, handed it to him quietly, without a word, because he  
12 knew that that celly was vulnerable and needed help. And that  
13 spoke to his heart.

14           And even now at Columbia, they were housed in the gym  
15 for a number of months, then rehoused someplace else, and then  
16 back into the gym. There were no bathroom facilities in that  
17 gym. They had to call COs to come, come escort us, and the COs  
18 would often wait. And Jay said, Oh, it's not too bad, if you  
19 lay down, if you lay down, the pain kind of goes away. He  
20 never complained about himself.

21           What did he complain about? The one inmate Pappy, 70  
22 years old, who couldn't hold it and who urinated on himself.  
23 And what was Jay's remark? You know, it was for Pappy. He was  
24 always concerned, kind, caring, compassionate for others.

25           And even when he was initially housed at Centre County

1 in August, at classification, there again they asked him where  
2 he wanted to be housed, and he said, Well, I'd like to come in  
3 with the old guy that I came in with so I can help him, he's  
4 slow, he doesn't understand.

5 And I apologize, Your Honor, I just wanted to make  
6 sure that I relayed to you the things that I see --

7 *THE COURT:* Of course.

8 *MS. DALLMANN:* -- and how I've grown up with my  
9 brother and what his true spirit is.

10 And I know my mom and dad did a video for you, and my  
11 dad is here today. He's not going to be able to say anything,  
12 but he wants you to know that he loves Jay very, very much.

13 And I recall, I recall early on my mom telling me  
14 something that my dad said to her. He said, I wish they would  
15 sentence me instead, I've lived my life, let them take me  
16 instead. And I think that with my parents, the way they raised  
17 us, that really speaks to how my parents have instilled  
18 compassion and generosity and that spirit in all of us, and it  
19 is in Jay.

20 He recently -- even in prison, where he's very, very  
21 vulnerable for so many reasons, he still tries to help others.  
22 And just a couple little examples. He had a cellmate Jesse,  
23 who's a young African-American who lived a life of crime. Jay  
24 ordered him Our Daily Bread, the religious pamphlets, and  
25 shared with him his Bible. And for some reason this odd

1 pairing stuck. And Jesse writes me and he says, I will love  
2 Jay forever for showing me the Lord.

3 And then there's a cellmate David, who I think had  
4 some severe intellectual disabilities. He stole from inmates  
5 at Columbia County, and he got beaten up for it, harassed and  
6 probably even sexually harassed. When he would steal from Jay,  
7 what did he do? He said, Now, David, he says, you know you  
8 have to ask me, right? And he was tolerant of it, but he tried  
9 to help him.

10 And I know that these aren't examples of bravery or  
11 heroism and maybe they aren't that good, but it's kind of hard  
12 to go back through the years and think of things when that  
13 person always had a good and generous and compassionate spirit  
14 and you probably took it for granted.

15 So I realize that what I wrote in the memo probably  
16 begs the question, what happened? How did he get to who he is  
17 now? It's certainly difficult to reconcile the person that  
18 I've described with these offenses that he's pled guilty, and I  
19 can only speculate. But several years ago, we did notice a  
20 change in his normally good judgment, and common sense seemed  
21 to dissipate.

22 He ended up ending his marriage, making rash  
23 decisions, changing a relationship, and there was a perceptible  
24 change we couldn't explain. Looking back, I realize that was  
25 also the time that his health had dramatically declined. He

1 suffered a stroke when driving in Arizona one year, gained a  
2 lot of weight, high blood pressure, uncontrolled diabetes, and  
3 severe sleep apnea.

4 He ignored his health, of course, until he could no  
5 longer drive. I wish that I would have been more persistent in  
6 my questioning of my brother. I'm sorry that I may have missed  
7 something that could not have -- that maybe could have helped  
8 him. And just as I am sorry for what I know that my brother is  
9 truly, truly remorseful for, Your Honor -- just as I am sorry,  
10 he is, as well.

11 And you may look around the courtroom today and wonder  
12 if Jay was such a good and helpful person as I described, where  
13 are his friends? Where's the rest of the family?

14 My mom is ill and my brothers -- she's also written a  
15 statement, and they both love Jay very, very much. And my  
16 other brothers love him, as well. And my sister has provided a  
17 statement for you, too, and they cannot be here today. And  
18 I've also spoken to many of his colleagues, and they can't be  
19 here today, either.

20 But I ask that you do not attribute their absence to a  
21 lack of not being supportive of Jay, of not finding him to be a  
22 good and caring colleague and person. They relayed stories to  
23 me of how Jay was always a good friend and always there for  
24 them.

25 Their absence may, perhaps, speak to their lack of

1 strength or perhaps it's their desire to remember their good  
2 friend as they last saw him, on some lonely stretch of  
3 interstate in their rearview mirror and knowing that he always  
4 had their back.

5 Over the past two years I cannot help but hear news  
6 and reports of arrests and convictions, each more unbelievable  
7 than the other. Unlike my brother, in many cases, the  
8 defendants have all lived a lifetime abusing the vulnerable and  
9 yet have been sentenced to less time than is being recommended  
10 for Jay.

11 I ask for leniency, Your Honor, as you consider just  
12 punishment for my brother. At his age and with his poor  
13 health, I fear this time will kill my brother. The  
14 compassionate nature that I admire and describe will mean only  
15 one thing in prison: vulnerability and easy prey.

16 This is the hardest thing I have done in my life. But  
17 I promise you, Your Honor, that my brother will always have my  
18 support, and I will help him in any way that I can. And on  
19 behalf of my family, I humbly, I humbly and respectfully ask  
20 Your Honor to consider the entirety of this man, this man  
21 (*displaying photograph*), as you sentence my brother today.

22 THE COURT: Thank you.

23 MS. DALLMANN: Thank you.

24 MR. THORNTON: Your Honor, our next witness will be  
25 Dr. Silverman.

1           THE COURT: All right. Thank you.

2           JOSEPH SILVERMAN, M.D., called as a witness, having been  
3           duly sworn or affirmed, testified as follows:

4           COURTROOM DEPUTY: Please state your name for the  
5           court reporter.

6           THE WITNESS: My name is Joseph Silverman.

7                                 DIRECT EXAMINATION

8           BY MR. THORNTON:

9           Q. Dr. Silverman, where are you from? Where do you live?

10          A. I live in Blair County. I was born there, and I practiced  
11          medicine there for over 50 years.

12          Q. Over 50 years?

13          A. Over 50 years there.

14          Q. And you currently live in Hollidaysburg. Is that right?

15          A. Which is a suburb.

16          Q. At this point, what is your occupation right now?

17          A. I have not yet retired, but I'm a general psychiatrist  
18          who's done a bit of everything in psychiatry from military,  
19          child, forensic, and general outpatient treatment.

20          Q. And can you tell us the percentage of your practice that  
21          was general psychiatry versus forensic psychiatry?

22          A. Well, for all those years, it was primarily a general  
23          psychiatric practice, treating people with depression,  
24          schizophrenia, obsessive-compulsive disorder, and so forth.  
25          But for the last eight years, after leaving the Veterans



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1 Administration, where I took care of veterans for 45 years,  
2 I've been doing court cases only, criminal fundamentally.

3 Q. Can you tell us a little bit about your education and your  
4 work history?

5 A. I am a graduate of Mercersburg Academy, Cornell University,  
6 University of Pittsburgh School of Medicine. I did a general  
7 medical internship at West Penn Hospital in Pittsburgh. My  
8 psychiatric training was at Western Psychiatric Institute and  
9 Clinic. And I am a fellow of the American Psychiatric  
10 Association, actually a distinguished life fellow based on  
11 experience and achievements.

12 Q. Do you hold any or have you held any faculty positions,  
13 teaching positions in your career?

14 A. I have done teaching for Altoona Hospital, Hershey Medical  
15 Center, University of Pittsburgh.

16 Q. And have you written any professional journals --  
17 professional publications or books or articles in professional  
18 journals?

19 A. Never a book, but a number of articles.

20 Q. And, specifically, was there an article that you wrote in  
21 the Cortlandt, C-o-r-t-l-a-n-d-t?

22 A. Cortlandt Forum, which is a medical journal for family  
23 practitioners, and they arranged for me to write a column on  
24 psychiatry every month for several years.

25 Q. And was one of the columns that you wrote on -- was it on

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1 personality changes in dementia in 1992?

2 A. Yes.

3 Q. So is this -- regarding personality changes in dementia, is  
4 that something that you've been interested in and following for  
5 years?

6 A. Absolutely.

7 Q. And the Psychiatric Annals, have you also written for them?

8 A. Yes, recently, actually in 2014, I -- with the editor of a  
9 symposium on psychiatry and society. The article that I wrote  
10 with Dr. Eisler had to do with criminal justice, and the title  
11 was, Criminal Injustice.

12 Q. Are any of the publications or writings that you've done,  
13 have they involved sex offenders of any type?

14 A. I don't recall writing any articles on sex offenses, but  
15 I've certainly seen a number of clients who were accused of  
16 sexual crimes.

17 Q. And have you been admitted as an expert in other courts?

18 A. Yes, throughout Pennsylvania.

19 Q. And, specifically, can you name a couple of them, a couple  
20 counties?

21 A. Blair County, Huntingdon County, Centre County, Cambria  
22 County, Somerset County, and Jefferson County.

23 Q. And was that an expert in the field of general psychiatry?

24 A. That was all forensic.

25 Q. That was all forensic psychiatry. Have you testified on

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1      behalf of the government and on behalf of defendants?

2      A.   I have.

3      Q.   Do you know which one you've testified more on?

4      A.   Oh, certainly.  Defense attorneys were more interested in  
5      psychiatric input than DAs, but there were a few DAs who  
6      solicited my opinion, too, and judges.

7                 MR. THORNTON:  Your Honor, we would offer  
8      Dr. Silverman as an expert in general psychiatry.

9                 THE COURT:  Any objection?

10                MS. TAYLOR:  No objection, Your Honor, and no  
11      questions as to qualifications.

12                THE COURT:  All right.  Dr. Silverman will be  
13      qualified as an expert in psychiatry and permitted to offer his  
14      opinions accordingly.

15                MR. THORNTON:  Thank you.

16      BY MR. THORNTON:

17      Q.   And the opinions you offer, Dr. Silverman, will they be to  
18      a reasonable degree of medical and psychological certainty?

19      A.   Those that I will state today will be within those  
20      parameters.  And typically when I submit reports to attorneys  
21      and courts, they are also with reasonable medical certainty.

22      Q.   Thank you.  If I could have the court's indulgence for one  
23      second, Your Honor.  Dr. Silverman, did you at one point have  
24      an occasion to interview Jay Reed?

25      A.   I did.

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1           MR. THORNTON: And, Your Honor, we have, from the  
2 exhibit list from our sentencing memorandum, the Exhibit  
3 Numbers 2, 3, 4, and 5 will be what Dr. Silverman discusses.

4 BY MR. THORNTON:

5 Q. And did you visit Mr. Reed as a result of being hired by  
6 the Federal Public Defender?

7 A. May I have that question again?

8 Q. Sure. Did you go to see Mr. Reed as a result of being  
9 hired by the Federal Public Defender's Office?

10 A. That is correct.

11 Q. And where did you see Mr. Reed?

12 A. That interview took place in Bloomsburg, Pennsylvania,  
13 where he was in a county court -- a county jail.

14 Q. Do you have copies of your reports there, or should I  
15 provide you with them?

16 A. I have them now.

17 Q. Okay. If we could, did you conduct a psychiatric  
18 evaluation of him on June 23rd, 2017?

19 A. I did.

20 Q. And what did you see your role as the psychiatric expert in  
21 this matter at that point?

22 A. Well, my job was, of course, to understand the individual  
23 and to try to assess how it was that he had apparently,  
24 allegedly -- and I think subsequently he agreed to it --  
25 committed these crimes against a number of children.

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1 Q. And when you went to that prison, did we provide you with  
2 the report of Dr. Dattilio who had done examinations of  
3 Mr. Reed?

4 A. Yes, I had reviewed that ahead of time.

5 Q. And did you -- after reviewing Dr. Dattilio's report, did  
6 you see alternative explanations to the conduct other than what  
7 Dr. Dattilio found?

8 A. Yes, I believed that there was reason to look into the case  
9 a bit further from the standpoint of a psychiatrist as opposed  
10 to a psychologist with reference to his overall mental status  
11 and problems with that.

12 Q. And what different perspectives does a psychiatrist bring  
13 rather than a psychologist?

14 A. Well, psychiatrists deal with some cases a lot more than  
15 psychologists do, and we also treat, which psychologists don't  
16 treat with regard to certain cases. There's an overlap where  
17 psychotherapy might be the treatment, but psychiatrists do  
18 chemical treatment and other organic treatments for brain  
19 disorders.

20 Q. And psychologists generally then do not -- well, like you  
21 said, they do not treat brain disorders or diagnose brain  
22 disorders?

23 A. They're welcome to diagnose according to their criteria and  
24 their tests, but they have a different perspective.

25 Q. And what difference would -- well, the different

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1 perspective that you brought to this case than Dr. Dattilio,  
2 what type of things were you looking for as opposed to what he  
3 was looking for?

4 A. I was looking for changes in brain functioning,  
5 particularly personality changes, behavioral changes.  
6 Dr. Dattilio was really exploring in detail the sexual  
7 orientation of the defendant, where I was looking primarily at  
8 his mental status and attempting to see if there was a reason  
9 for his unusual behavior. After having been heterosexual for  
10 50 years or more, to have a sexual interest in children did  
11 suggest that there was a change in the brain which led to that  
12 change in behavior.

13 Q. And during your report, did you note symptoms that  
14 supported your hypothesis?

15 A. I drew the conclusion that the defendant did have dementia  
16 related to poor memory and poor judgment. But I should point  
17 out that from the medical standpoint, pedophilic behavior in  
18 later life is a brain disorder, often temporal lobe, and it  
19 requires diagnosis and treatment.

20 Q. And what type of treatment can be -- if it's a brain  
21 disorder of the temporal lobe, what type of treatment can be  
22 had for that?

23 A. Difficult to say in general, but it could range from  
24 medication that improves cognition and intellectual function,  
25 could be antidepressants, which in some cases change sexual

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1 behavior. There might be other treatments depending on what is  
2 found.

3 I was looking, of course, for abnormalities in the  
4 thyroid, B12 serology, which means brain syphilis. I was  
5 looking for all those things. And some of those tests were  
6 performed, some of them. Very few were not.

7 Q. Now, did you suggest a test, some tests to be performed  
8 specifically?

9 A. I did, I did. He had had a CT scan, but I suggested an MRI  
10 scan, which is more precise in brain disorders.

11 With both of those showing nothing specific, there  
12 would be a routine of subjecting the defendant to a PET exam,  
13 P-E-T, positron tomography, because different disorders,  
14 different abnormalities show in different ways on different  
15 scans, and plenty of things don't show on any scan. But one  
16 wants to see what's there, and if there's anything treatable,  
17 like, for example, a brain tumor or an infection, then a  
18 specific treatment could be effective.

19 Q. Now, if I could take you to Page 3 of your psychiatric  
20 evaluation, which is Exhibit Number 2 to the sentencing  
21 memorandum, and on Page 3, you have what's entitled an opinion  
22 section.

23 And in there you list your mental diagnoses as  
24 neurocognitive disorder, moderate, with impairment of memory  
25 and higher brain functions by capacity for abstract thinking.

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1 What brought you to that conclusion?

2 A. What was the --

3 Q. What brought you to that conclusion?

4 A. First of all, there was a history of change, a history of  
5 impaired memory. And at interview, this was very striking.  
6 Practically the first thing the defendant said to me is, I  
7 can't remember anything, I can't remember what I did yesterday,  
8 my sister has to remember things for me. Well, that was not a  
9 very subtle clue, that was a very clear clue that there may  
10 well be a brain change.

11 Then there were specific tests. The storytelling  
12 test, which is very simple, where you tell a story and ask for  
13 recall of that story, and his performance was terrible. And  
14 that is indicative of -- right there of very poor function.  
15 And also proverb interpretation showed a lot of organicity or  
16 organic brain dysfunction.

17 Q. And when you say "organic brain dysfunction," is that  
18 something you're born with or is that something that develops?

19 A. It could be either, but in this case, one assumes it was  
20 developed subsequently and very likely correlating with the  
21 behavior for which this gentleman has been charged.

22 Q. And at the end of that number one there, you say that the  
23 cause of the neurocognitive disorder and impairment of memory,  
24 cause to be determined. What did you do to try to determine  
25 that cause?



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1 A. Well, I've already mentioned the various blood tests and  
2 imaging that had been done. Obviously one keeps doing more and  
3 more as the initial tests don't find anything. I did mention  
4 that this PET scan would be the next imaging to be performed.

5           Anyhow, this is what one looks for because -- and  
6 hopes for finding something that's treatable, and the  
7 investigation has not yet been completed.

8 Q. Did you determine whether or not his brain dysfunction  
9 affected his judgment and self-control?

10 A. That is my conclusion.

11 Q. And I guess if we go to the final page of your initial  
12 report, there you indicate your opinion on criminal  
13 responsibility. Could you explain that to us?

14 A. I'll read this. It says, At the time of the alleged crimes  
15 Mr. Reed was laboring under the burden of a brain dysfunction  
16 that had complex effects on his thinking, feelings, desires,  
17 and capacity for self-control.

18           If I may go on, This defendant's newly developed  
19 interest in immature females may have been a result of changes  
20 in his brain consequent to a likely unrecognized pathologic  
21 process.

22           This was the initial report from April, and  
23 subsequently we have a bit better idea as to what might be  
24 involved, including, of course, sleep apnea, which can cause  
25 dementia right there, right in itself, and that we did

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1 actually, as you know, arrange for treatment. I don't know  
2 that the treatment was monitored, but at least it was  
3 administered.

4 Q. And that was through the CPAP machine?

5 A. The CPAP machine, right. The point being that if you have  
6 sleep apnea, you starve your brain of oxygen, and that does  
7 damage after a time and can cause dementia. Restarting  
8 adequate oxygenation might relieve the damage but might not.

9 Q. And at this point do you know whether the damage has been  
10 relieved or not?

11 A. As far as I can tell, there has not been major improvement.

12 Q. And then on October 22nd, you issued an update on Jay Reed,  
13 and this says, After lab studies review. What lab studies had  
14 you reviewed?

15 A. I reviewed the serology, I reviewed the B12, and perhaps  
16 some others, as well.

17 Q. And what did the MRI reveal?

18 A. The MRI revealed an abnormality in the brain which was  
19 nonspecific, could be almost anything, but was not diagnostic  
20 of anything.

21 Q. And what do you mean by that exactly?

22 A. In other words, one can't say because of that lesion, we  
23 know that this is the problem. All we can say is that lesion  
24 may or may not be significant, and it may or may not be related  
25 to the behavior of which the defendant is accused.

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1 Q. And you indicated, also, in the second paragraph, the lab  
2 results reveal many abnormalities. What were those other  
3 abnormalities?

4 A. Well, the gentleman has diabetes, and there are a number of  
5 abnormal problems there, I believe also hypothyroidism and  
6 other medical diagnoses which, I guess, were summarized under  
7 diagnoses. See if we missed any.

8 Panic disorder is, of course, a psychiatric problem.  
9 History of substance disorder. Okay, that's what I have. And,  
10 of course, attention deficit disorder did not require a lab  
11 test. I did administer tests for that, and that can be a  
12 contributing factor to various problems.

13 Q. And after doing the lab studies, in your October 22 report,  
14 you came up with what you called a bottom line. What did you  
15 mean by that?

16 A. May I ask what that reference was from?

17 Q. Sure.

18 MR. THORNTON: May I approach the witness, Your Honor?

19 MS. TAYLOR: Your Honor, if I could just have an  
20 exhibit number.

21 THE COURT: Of course.

22 THE WITNESS: Okay. Thank you.

23 MR. THORNTON: It's Exhibit --

24 THE WITNESS: Okay. This says --

25 MR. THORNTON: Dr. Silverman, wait one second.

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1           *THE WITNESS:* Oh, sure.

2           *MR. THORNTON:* It's Number 4.

3           *MS. TAYLOR:* Okay.

4           *THE WITNESS:* Bottom line, as of October 22, 2017, so  
5 we've had a year beyond that, Mr. Reed's brain dysfunction is,  
6 at present, unexplained, but whatever its nature and cause, it  
7 may have induced the change in sexual interest and behavior  
8 that led to criminal activity, activity the defendant has  
9 formally acknowledged.

10       BY MR. THORNTON:

11       Q. And when you say "formally acknowledged," did he indicate  
12 remorse to you for the activity that occurred?

13       A. I would not say remorse. He said some of the charges,  
14 even, perhaps, those that he even pled guilty to, he could not  
15 acknowledge, but that there were some indiscretions that were  
16 poor judgment on his part, which is probably not completely  
17 candid, but that's what he told me at the time.

18       Q. Now, from your examination -- and I know you did file one  
19 last report, which would be Defendant's Sentencing Memorandum,  
20 Exhibit Number 5. I'd like to show you that from October 25th,  
21 just a couple days later. If you could just look that over.

22       A. Okay. This summarizes pretty much what I've said already,  
23 I think, except that I did suggest that a neurologist become  
24 involved because, after all, brain diseases are the property of  
25 neurologists. Psychiatrists deal with these things and we have

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1 some neurologic training, but they have much more. And is  
2 there anything further?

3 Q. No, unless you had something you wanted to bring up from  
4 there.

5 A. Well, I don't know if I've made this point today, but the  
6 medical position on pedophilic behavior later in life is that  
7 it is a brain dysfunction. Before I did mention the temporal  
8 lobe, but it's some sort of brain dysfunction. So that -- to a  
9 physician, that charge should have led to a neurologic  
10 evaluation of the patient rather than -- in other words, a  
11 medical approach rather than a penal approach.

12 Q. What do you mean specifically by that?

13 A. I beg your pardon?

14 Q. What do you mean specifically by that?

15 A. Well, that if in medical hands, the tests could have been  
16 done in a week, and we would know what's knowable and what is  
17 not. But to plunge somebody into the penal system, punishing  
18 him for behavior that, in my judgment, he had no culpability  
19 for, seems very unfortunate.

20 Q. And when you say that he had no culpability for the acts  
21 that occurred here, how do you mean that?

22 A. Well, people have little enough free will, very likely none  
23 to start with, but here we have a -- in addition, we have a  
24 brain disorder that very well may explain the behavior for  
25 which he was charged.

1 Q. But you cannot specifically say that that specific part of  
2 his brain caused some specific action, can you?

3 A. Can't be very specific, but I think there is, in my mind,  
4 minimal doubt that the brain dysfunction was responsible for  
5 his behavior.

6 MR. THORNTON: Thank you. We have no further  
7 questions of Dr. Silverman, Your Honor.

8 THE COURT: All right. Ms. Taylor.

9 MS. TAYLOR: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. So, Dr. Silverman, if we could pick up actually where you  
13 just left off, because I'm not sure I quite understood your  
14 last responses.

15 You were explaining to Mr. Thornton that -- I believe  
16 your last response had to do with you having an issue with  
17 plunging the defendant into the penal system for issues that he  
18 was not actually culpable for based on a brain disorder. Is  
19 that right?

20 A. That's right.

21 Q. And can you explain to the court exactly what you know  
22 about the facts that underlie the charges in this case?

23 A. I'm familiar with the charges, absolutely.

24 Q. Okay. So what is it that you don't think Mr. Reed is  
25 culpable for?

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1 A. Well, let me just tell you, in the best of all possible  
2 worlds, it would be understood by the state that an individual  
3 who is accused of sexual behavior with immature females in  
4 later life is a medical case by definition.

5 Q. And when you say that, are you referring to everyone?

6 A. That fits that description.

7 Q. Okay.

8 A. Because, you see, pedophilia, the fundamental, basic  
9 run-of-the-mill pedophilia is a condition that manifests at  
10 puberty and involves shy people who don't relate well to  
11 adults. If you have that kind of behavior later in life, it's  
12 a different thing entirely.

13 Q. Well, I saw that opinion -- you state that opinion in your  
14 report. Right?

15 A. Yes.

16 Q. And you had an opportunity to review Dr. Dattilio's report  
17 that's Exhibit 1 attached to the defense's sentencing  
18 memorandum?

19 A. I did, I did.

20 Q. And Dr. Dattilio has a different opinion as to whether the  
21 defendant is a pedophile?

22 A. I think that's right. That was his opinion.

23 Q. His opinion -- do you recall what his opinion was on that  
24 topic?

25 A. May I tell you, we do have a problem in psychiatry in that

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1 some diagnoses are based on behavior. So it doesn't mean that  
2 this is the psychiatric status of the person, this is a  
3 behavioral judgment.

4 So his behavioral observation, which the defendant  
5 pled guilty to, is that he performed pedophilic behavior, but  
6 it's a different kettle of fish than the standard pedophilia,  
7 which is as I described.

8 Q. And the definition that you're using for -- we're sort of  
9 using two terms interchangeably. Pedophilia and a pedophilic  
10 disorder, those are two things that are distinguished by the  
11 DSM-5. Right?

12 A. Well, I think in simple terms, you could have pedophilic  
13 behavior without being a pedophile. That's definitely right.

14 Q. But you're aware that the DSM defines pedophilia  
15 differently from a pedophilic disorder?

16 A. May I tell you that my judgment is that the DSM-5 is very  
17 poor on pedophilia. Let me tell you, I was trained on DSM-1.  
18 I've lived through all these five manifestations. And I know  
19 the people who were in charge of developing these different  
20 forms, and they're all works in progress. We need to do a lot  
21 more work on that section.

22 Q. So it sounds like you don't agree with the definition from  
23 the DSM-5 of pedophilia?

24 A. No, because it doesn't distinguish between the -- you might  
25 say inherent pedophilia, which is a common thing, and the



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1 pathologic onset of something many years beyond puberty, middle  
2 life or beyond.

3 Q. Well, you would agree with me that the way that the DSM-5  
4 defines pedophilia currently is as an intense and recurrent  
5 sexual interest in prepubescent children that becomes a  
6 disorder if it causes a person marked distress or interpersonal  
7 difficulty or if the person acts on his or her interests?

8 A. Well, that's the general definition, but we've got to get  
9 it down to distinguishing between the two, the inherent and the  
10 late life, because the late life is a neurologic disorder. We  
11 don't know anything about really the nature of the inherent  
12 pedophilia.

13 Q. But isn't it true that you also don't know that what  
14 happened with Mr. Reed, the defendant in this case, only  
15 happened late in life?

16 A. Yes, that's exactly the point, that it's a different  
17 disorder completely than the inherent form.

18 Q. No, I'm sorry, I think maybe you misunderstood my question.

19 A. Oh.

20 Q. Let me rephrase it. All that the government can prove is  
21 that the defendant was caught late in life. Right? That's all  
22 that the case is that's before the court?

23 A. Right, but our history is that he was definitely  
24 heterosexual for all those years prior to that.

25 Q. And the history that you're referring to, what's that based

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1 on?

2 A. Based on history, based on the history that we have, which  
3 is pretty detailed. Dr. Dattilio did a very detailed history.

4 Q. I'm sorry?

5 A. Dr. Dattilio's history was very detailed on that count.

6 Q. And Dr. Dattilio's history, do you recall what his history  
7 was based on, where that came from?

8 A. Based on, where that came from?

9 Q. Yes, sir.

10 A. Could you help me with that?

11 Q. It was self-reported by Mr. Reed is what I'm getting at.

12 A. Oh, yes, yes, yes, sure, sure.

13 Q. So in Defense Exhibit 1 -- I'm sorry, sir, do you have a  
14 copy of Dr. Dattilio's report?

15 A. I do here. I have one here, I think. I'm sure I do.

16 Yeah, right here.

17 Q. So that's -- Defense Exhibit 1 is Dr. Dattilio's report.  
18 And you mentioned the history that's in Dr. Dattilio's report  
19 as being rather detailed. And on Pages 3 through 13 of Defense  
20 Exhibit 1, that makes up the detailed history in Mr. Reed's  
21 case from Dr. Dattilio's report. Right?

22 A. Sure.

23 Q. And it is incredibly detailed?

24 A. Um-hum, right. I have to say, Dr. Dattilio, who is, I'm  
25 sure, a superb psychologist, he really missed it on this one.

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1 Q. Well, my question to you, though, about Dr. Dattilio's --  
2 the history that's self-reported by Mr. Reed is, doesn't that  
3 very detailed history that Mr. Reed gave Dr. Dattilio, doesn't  
4 that conflict with your opinion, sir, about Mr. Reed having  
5 severe memory problems that lead to this generalized brain  
6 dysfunction diagnosis that you've opined?

7 A. Let me see. Dr. Dattilio acknowledges, actually, that it's  
8 a late-life pedophilic behavior or inappropriate sexual  
9 behavior. So we don't disagree on that. The only thing is, he  
10 didn't seriously consider that this was a brain disease.

11 Q. Right, I'm not -- I understand Dr. Dattilio didn't address  
12 that particular issue. But your opinion from -- that you've  
13 opined about earlier that's in your report talked about brain  
14 dysfunction that's unexplained and that's a neurocognitive  
15 disorder on Page 3 of your report, Exhibit 2, Defense Exhibit  
16 2.

17 A. Um-hum, sure.

18 Q. And you talked about that that was based on the defendant's  
19 self-report from your interview with him that he couldn't  
20 remember things. He said his sister had to remember things for  
21 him. And then you talked about giving him the storytelling  
22 test.

23 But isn't that in direct conflict with what we see in  
24 Dr. Dattilio's report if you look at that very detailed history  
25 on Pages 3 through 13 of Defense Exhibit 1?

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1 A. Well, I think it's compatible. Could you point to  
2 something? Because I think we do agree he was heterosexual in  
3 a normal, normative fashion.

4 Q. Sir, I'm not asking about any specifics, just that very  
5 simply, you say Mr. Reed told you he couldn't remember anything  
6 when you see him on June 23rd of 2017, and when he talks with  
7 Dr. Dattilio on June 27th of 2016, Dr. Dattilio produces, you  
8 know, ten pages of a very detailed personal history that  
9 Mr. Reed provided him.

10 A. Sure, which I agree to. I have no reason to doubt it.

11 MR. THORNTON: Your Honor, we would object as to the  
12 foundation for the question. Ms. Taylor has failed to note  
13 that Dr. Dattilio also spoke with Deborah Dallmann on  
14 April 3rd -- I mean on November 3rd, 2016, before his report  
15 was written and with Carol Morrison on November 8th, 2016,  
16 before his report was written.

17 So Ms. Taylor's conclusion that this was all Jay's  
18 recollection seems to not be absolutely accurate. It seems to  
19 need correction.

20 MS. TAYLOR: Well, Your Honor, on Page 3, at the  
21 beginning of the history, the portion that I've referenced for  
22 Dr. Silverman, at the bottom of the page it states it was on  
23 June 27th, 2016, that Mr. Reed provided me with the following  
24 rendition of his life, and then that's the portion that I've  
25 referenced starting at the bottom of Page 3 and then ending on

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1 Page 10.

2 *THE COURT:* All right.

3 *THE WITNESS:* Yes, I agree to the history, but  
4 Dr. Dattilio -- let me say in general, we have not done a great  
5 job at understanding pedophilic behavior, whether the standard  
6 inherent type, the common type, or the late-life type.

7 But the late-life type is medically understood now as  
8 a brain dysfunction, and Dr. Dattilio was not aware of that,  
9 apparently. It's a confusing area, and I don't blame him. I  
10 know he's an excellent psychologist, but that is a point that  
11 he overlooked.

12 BY MS. TAYLOR:

13 Q. Now, sir, your evaluation was based on your interview with  
14 Mr. Reed. Correct?

15 A. Correct, and talking with family members and so forth.

16 Q. Well, on your report it indicates that it was based on your  
17 interview of Mr. Reed, your review of Dr. Dattilio's  
18 assessment, the presentence report, which you have listed as  
19 Document 46, and communicating with Mr. Reed's sister, Deb  
20 Dallmann.

21 A. And other family members, too, an ex-wife and so forth. If  
22 they're not listed, that's my shortcoming.

23 Q. Okay. Well, if you look at your report, Defense Exhibit 2,  
24 the final page, you list at the bottom the sources of  
25 information. Correct?

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1 A. Right, that is true. And I typically -- of course, I  
2 allude to that, I guess, earlier, but I would ordinarily  
3 indicate the family members that I interview by telephone.

4 Q. And on that list is the four things that I stated, and the  
5 fourth is Ms. Dallmann, Mr. Reed's sister, but you don't have  
6 any other family members listed. Right?

7 A. You're correct, and that is my shortcoming.

8 Q. Now, Dr. Dattilio administered a number of different tests  
9 that he reported on in his report?

10 A. That's correct.

11 Q. Did you repeat any of those tests?

12 A. The storytelling test is the one I repeated because I  
13 couldn't believe that that score was roughly normal, the score  
14 he reported for the storytelling test in the MMSE, second  
15 version, because the test -- his memory for the anecdote that I  
16 read to him was terrible, and that is virtually diagnostic of  
17 brain dysfunction.

18 Q. You didn't repeat the Hare psychopathy checklist?

19 A. Oh, no, no, no.

20 Q. But you reviewed the score that Dr. Dattilio gave Mr. Reed,  
21 a 17 out of 30. Right?

22 A. A 17 out of 30 on the storytelling, was it?

23 Q. On the Hare.

24 A. On the Hare. I didn't review that. Obviously that score  
25 is not indicative of psychopathy, but it does have some

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1 similarities with sociopathy.

2           May I say, the fundamental issue in sociopathy -- good  
3 to look at you, Your Honor -- the fundamental issue in  
4 sociopathy is lack of empathy. Unfortunately, it is largely  
5 inherited, that lack of empathy, but with that lack of empathy,  
6 you just don't feel for other people. You just don't have that  
7 warmth. You may use other people as objects, manipulate them.

8           But this man has a history of being warm and  
9 supportive in many relationships, which is virtually the  
10 negation of sociopathy. So I take sociopathy right out of the  
11 picture.

12 Q. Well, sir, you saw how Dr. Dattilio scored him on the Hare.  
13 Right?

14 A. May I have that again?

15 Q. You saw what Dr. Dattilio had to say about how he scored  
16 him on the Hare?

17 A. Yes, I did.

18 Q. And that the score of 17 places him in a higher percentile  
19 rank, suggesting that there are some antisocial traits and  
20 propensity towards sexually violent predatory acts?

21 A. Well, that's what sociopathy is. And he thought there were  
22 some indicators of that but not diagnostic. I think it was a  
23 sub-diagnostic level that he reported, and I did not see that  
24 as being significant, particularly with the history as I  
25 pointed out of warm, helpful relationships with other people.

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1 Q. What about his relationships with the four victims in this  
2 case?

3 A. You know, this surprises people, but I've talked to other  
4 people who have been involved with underage partners, and very  
5 often I believe that they are genuinely fond of the children,  
6 generally fond of the children.

7 But they demonstrate a phenomenon that is in the  
8 literature and makes very good sense to me, and that is that  
9 there is a failure to limit affection for children to  
10 nonsexual, nonacting out behavior, that there's something about  
11 the caring that gets carried away.

12 And I can believe that this happened in his case, as  
13 it does in a variety of other cases. It's not that they hate  
14 the children, it's just that there's something that clicks in  
15 their brain and that becomes sexualized, whereas for most  
16 people, they're just children and they're not sexual objects.

17 Q. But according to your report, when you asked Mr. Reed about  
18 the photographing of the young victims in this case, that's not  
19 what he told you. Right? He didn't give you an answer about  
20 having sexualized the children?

21 A. Well, may I say, this phenomenon that I've described, which  
22 is not unique with me, I've seen this in the literature and I  
23 agree with it, we didn't -- I didn't talk to Mr. Reed about  
24 that, of course, because that would be at a level that he  
25 wouldn't understand, and that wouldn't have been part of our



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1 conversation.

2 Q. Did you ask him if he took pictures of the little girls in  
3 this case?

4 A. Yes, he admitted that.

5 Q. And he told you, he gave you a reason as to why he did it.  
6 Right?

7 A. Yes, that story about showing the girls how dirty they were  
8 after playing outside and so forth. That was his explanation.  
9 It did not strike me as terribly valid, but that was what he  
10 told me.

11 Q. And you also asked him if he thought that he had done any  
12 harm to the victims in taking those types of images of them?

13 A. Yes, that's right. He said at first he couldn't see any  
14 harm, but then in a general way, he acknowledged that it could  
15 have been harmful. He wasn't very precise about that. Maybe  
16 that's a little more complicated than he can handle or maybe it  
17 was hard for him to be totally frank.

18 Q. But then after he acknowledged he could have done some harm  
19 to them, he had another comment about harm, right, that you  
20 documented in your report?

21 A. Harm? Do you want to quote it so I know?

22 Q. In a later -- in Exhibit 2, Defense Exhibit 2, your report  
23 on the bottom of Page 2, you indicated, In a later comment,  
24 Mr. Reed did acknowledge that there could have been some harm  
25 to the children, though mainly he felt that the major harm was

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1 legal peril to the photographer rather than adverse  
2 psychological effects --

3 A. Right.

4 Q. -- upon the girls.

5 A. Right, right. Again, that does not reflect a profound  
6 understanding of why it's harmful. We know it's harmful  
7 because it exposes young children to sex at a level that is not  
8 appropriate for them, that confuses them, but I think that's  
9 too complicated for him to understand.

10 Q. Well, Mr. Thornton asked you some questions about whether  
11 he -- Mr. Reed was remorseful to you, and that's something  
12 that, you know, I think the judge will be considering in  
13 imposing her sentence. And you had indicated that, no,  
14 Mr. Reed did not express remorse to you. That type of comment  
15 would suggest he was not remorseful.

16 A. Well, of course, he's in denial of some of the behavior.

17 Q. What behavior is that that you're referring to?

18 A. I believe -- he was not very specific, but he did indicate  
19 that there were some things he was charged with that he could  
20 not acknowledge. I assume the physical contact.

21 Q. Would it change any of the opinions that are in your report  
22 here today if you learned that in May of this year, he actually  
23 did plead guilty to the local charges of rape of the minor  
24 victims that are the same minor victims in this case?

25 A. I'm aware that he finally did agree to accept that. He did

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1 agree to it in general and in specific but without being  
2 questioned specifically.

3 Q. So would the fact --

4 A. I should point out, people with brain damage can't think at  
5 a high abstract level. That was the implication of the  
6 diagnosis.

7 Q. Well --

8 A. See, remorse requires a certain abstract conclusion from  
9 things. I don't think he's able to do that.

10 Q. But my question was, would the fact that he pled guilty to  
11 the rape, the rape charges of those minor victims that are the  
12 same minor victims in this case, would that change any of your  
13 opinions in your report?

14 A. No. I'm sure he accepted counsel's recommendation that he  
15 agree to that, and there's no reason why he shouldn't do that.  
16 But it was just too painful for him, I think, to admit to  
17 specific things.

18 Q. So you stand by your opinion that he's not a pedophile?

19 A. Well, to make clear, I think he demonstrated pedophilic  
20 behavior.

21 Q. That's not what you said in your report, sir.

22 A. Well, I'm happy to make it more clear for you now. But the  
23 point is, he is a victim of a brain disorder, and it should not  
24 be confused with inherent pedophilia.

25 Q. The report that the defense submitted to the court, Exhibit

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1 2 on Page 4, in the middle of that page, the sentence says, It  
2 is clear that Mr. Reed is not a pedophile. Is that not your  
3 opinion, sir, now?

4 A. Let me take a look at that. Is not a pedophile, okay.  
5 Actually, we are quibbling about definitions. I think it's  
6 better if we leave it as I've said, that we have a  
7 differentiation between inherent pedophilia and late-life  
8 pedophilia. Late-life pedophilia is a brain disease. So I  
9 think when I wrote that, I was thinking that it's important to  
10 distinguish his behavior from inherent pedophilia.

11 I still believe it is necessary to distinguish  
12 late-life pedophilic behavior, which is the result of a brain  
13 disease, from the inherent pedophilia.

14 Q. In coming up with that conclusion, sir, you haven't had an  
15 opportunity to view any of the forensic evidence that was taken  
16 from Mr. Reed's devices in this case, any of the images.  
17 Right?

18 A. Actually, I did not look at that.

19 Q. Okay. I'm going to show you what's been marked as  
20 Government's Exhibit 7.

21 MS. TAYLOR: And, Your Honor, what this is is just a  
22 printout of -- I believe it's ten, only ten images of the  
23 roughly 500 that were taken off of Mr. Reed's devices. Last  
24 week we had an opportunity to invite Mr. Thornton over. He had  
25 a chance to review them at that time with an agent from the FBI

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1 and myself. I believe he had a chance to take a look at them  
2 again this afternoon before we started the hearing. May I  
3 approach the witness?

4 *THE COURT:* Yes. Was it 500 images or 300?

5 *MS. TAYLOR:* There were 500 total. Two hundred were  
6 of the hands-on victims in the case, and then 300 were of  
7 commercially downloaded child pornography.

8 *THE COURT:* Thank you.

9 BY MS. TAYLOR:

10 Q. Sir, I'm going to hand you a notebook that's marked as  
11 Government's Exhibit 7.

12 A. Okay. May I tell you, Your Honor, this is a very important  
13 point. I've been down this road in many a case. Things like  
14 this are inflammatory and interfere with an objective  
15 scientific evaluation.

16 *THE COURT:* Your objective scientific evaluation?

17 *THE WITNESS:* I beg your pardon?

18 *THE COURT:* Are you saying that you can't objectively  
19 evaluate this after seeing the images?

20 *THE WITNESS:* No, no, I'm saying that this kind of  
21 evidence is often presented to inflame people and to cause them  
22 to use less judgment and more emotion.

23 BY MS. TAYLOR:

24 Q. Are you saying the court can't be objective?

25 A. That's the purpose of certain kinds of confrontation. If I

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1 may give an example, there was a murder case that I did a  
2 couple of years ago, and the DA asked if I had seen evidence of  
3 the damage to the victim, and I said no because it's  
4 irrelevant.

5 My evaluation is not informed at all by something that  
6 is emotionally stirring. This is a mistake that the law often  
7 makes, which is the same mistake that criminals make, which is  
8 reacting with your emotional circuitry rather than your  
9 intellectual circuitry.

10 *THE COURT:* That's why we have rules of evidence. But  
11 I don't think the prosecutor is trying to inflame you at this  
12 point.

13 *THE WITNESS:* No, I'll be happy to look at it. I'll  
14 be happy to look at it. But the point is, it is irrelevant to  
15 my work.

16 *THE COURT:* Okay.

17 *THE WITNESS:* It's irrelevant. I can imagine. I have  
18 seen naked children, including my own.

19 BY MS. TAYLOR:

20 Q. Sir, if you could just take a look at the few images that  
21 are in the notebook that's Government's Exhibit 7.

22 A. Yeah. Okay. Again, this is totally irrelevant to my work.

23 Q. Having seen those images, sir, do the images that you've  
24 seen, do those change your opinion, any of the opinions that  
25 are in your report in any way?

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1 A. Absolutely not, because, as I say, this has nothing to do  
2 with my evaluation.

3 Q. The fact that the images are not as the defendant described  
4 them, clearly for the purpose of hygiene, as they show closeups  
5 of the minor victims' vaginas with temporary tattoos placed on  
6 them and there are some that show his fingers close to their  
7 vaginas, the fact that those are different than the way he  
8 described them to you --

9 A. He didn't describe them to me.

10 Q. Well, he told you, according to your report, that they were  
11 for the purposes of hygiene.

12 A. Yes, right.

13 Q. Do those pictures look like they're for the purpose of  
14 hygiene?

15 A. Oh, I never thought that they would be. That's what is  
16 called a rationalization.

17 Q. It's called a lie, isn't it, sir?

18 A. Well, a rationalization is an answer given to meet certain  
19 emotional needs of the speaker. And it was very hard for him  
20 to be frank about that, and he was kidding himself as much as  
21 possible. That's a rationalization.

22 Q. Well, sir, your diagnosis or any medical provider's  
23 diagnosis is only as good as the information that you're  
24 provided. Correct?

25 A. That's correct.

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1 Q. So if he's providing you rationalizations and other types  
2 of information, how accurate can your information be?

3 A. Well, I think that it's not too much to ask of the forensic  
4 examiner to recognize a rationalization when he sees one, and I  
5 certainly was able to do that.

6 Q. Now, you've made some comments about the defendant being  
7 brain damaged. You've used that term. You had the  
8 defendant -- the MRI scan done of the defendant. It's not your  
9 testimony that this MRI scan that the defense has attached to  
10 their sentencing memo, that that shows any brain damage, is it?

11 A. It shows something, and it's equivocal. So it's  
12 nonspecific.

13 Q. So you're saying it could be something, or it could be  
14 nothing?

15 A. That's correct.

16 Q. It doesn't show a brain tumor?

17 A. It does not.

18 Q. And you've also referenced that sleep apnea might have had  
19 something to do with his behavior in raping four minor girls  
20 and photographing their naked genitalia?

21 A. That's correct. We have the brain dysfunction, which might  
22 have been -- might be due to sleep apnea, but we don't know, so  
23 at this point we can't say specifically what the cause was, but  
24 we sure know the result.

25 Q. What's the result then, sir?



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1 A. The brain damage. In other words, brain damage isn't just  
2 something you see on an X-ray, brain damage is something you  
3 assess by history and examination.

4 Q. But you would agree with me that there are lots of people  
5 that have brain tumors that don't run out and rape little girls  
6 and take pornographic pictures of them. Right?

7 A. Well, there are people with definite lesions who do so, as  
8 a matter of fact.

9 Q. My question was, there are people that have brain tumors  
10 that do not rape little girls and take pornographic pictures of  
11 them? I mean, my brother would be an example, my cousin would  
12 be an example, the trooper sitting back there would be an  
13 example.

14 MR. THORNTON: Your Honor, do all those people have  
15 brain tumors?

16 MS. TAYLOR: They sure do.

17 MR. THORNTON: Okay. Interesting.

18 THE WITNESS: Are you quoting facts then?

19 BY MS. TAYLOR:

20 Q. Yes. But I'm asking you, are there people that have brain  
21 tumors that don't have --

22 A. Sure.

23 Q. -- that don't rape little girls and take pornographic  
24 pictures?

25 A. Sure. May I tell you, the effect of a brain tumor, which

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1 is a clear thing we can see on an X-ray of a certain kind,  
2 this -- sorry, could the stenographer read me the last sentence  
3 on that?

4 Q. Well, I can ask you the question again.

5 A. Okay.

6 Q. Aren't there people --

7 A. Oh, yes, the effects of brain -- okay. Thank you. The  
8 effect of a brain tumor depends on where it is. So strange  
9 things have happened from brain tumors, that's for sure, but it  
10 varies from case to case. There are probably a thousand  
11 different manifestations.

12 Q. And Mr. Reed doesn't have a brain tumor. The MRI showed  
13 that.

14 A. He doesn't have a brain tumor, but he has something wrong  
15 with his brain.

16 Q. And you thought that the MRI might show dementia. Right?

17 A. No, the MRI doesn't show dementia, but the history and the  
18 examination show dementia.

19 Q. Well, do you have Defense Exhibit 4, your letter dated  
20 October 22nd, 2017? Do you have a copy of that?

21 A. May I have that date again?

22 Q. October 22nd, 2017.

23 A. Yeah, I've got it right here.

24 Q. And that letter is entitled the Update on Jay Reed After  
25 Lab Studies Review. Right?

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1 A. Correct.

2 Q. And in that first paragraph, you're talking about the  
3 findings of the MRI. Right?

4 A. Right. And there is that abnormality, but it's  
5 nonspecific, and I don't use that as evidence.

6 Q. But you indicate in the last couple sentences of that  
7 paragraph, Whether this is related to my impression of a  
8 dementing process is unclear but not likely. The usual signs  
9 of dementia, including enlarged ventricles and loss of brain  
10 tissue, were not found.

11 A. Correct.

12 Q. Things that you could have seen on the MRI weren't there?

13 A. That's correct, only what was there was there, and it was  
14 not diagnostic.

15 Q. And then in Defense Exhibit 5, your letter three days  
16 later, October 25th, 2017, your last sentence is, A penal  
17 placement is far from ideal. And you mentioned that in your  
18 testimony today.

19 A. Correct.

20 Q. Your opinion is that this defendant should not be  
21 incarcerated. Is that what that's a reference to?

22 A. I would have been very happy to have this person in a  
23 medical setting to have the total workup performed and after  
24 that punishing for -- punishing a person for a behavior that he  
25 is not responsible for is, in my judgment, immoral.

1 MS. TAYLOR: Your Honor, those are all the questions I  
2 have of Dr. Silverman.

3 EXAMINATION

4 BY THE COURT:

5 Q. Dr. Silverman, I have a couple of questions for you.

6 A. Sure.

7 Q. You have a very distinguished resume.

8 A. Thank you.

9 Q. You said that you were a treating physician or a treating  
10 psychiatrist for a very long time.

11 A. (Nods head.)

12 Q. Yes? Have you treated people before with abnormalities,  
13 mental abnormalities related to sleep apnea?

14 A. Sleep apnea is something we look for, absolutely, and the  
15 course of treatment is a CPAP and related procedures. Have I  
16 ever seen or do I even know of sleep apnea as causing this kind  
17 of behavior? I really don't know.

18 Q. You have not treated anyone for this?

19 A. Well, no, actually, you see, once the diagnosis is made,  
20 the treatment is pulmonary. So the diagnosis is psychiatric,  
21 but the treatment is pulmonary.

22 Q. Sleep apnea is a fairly common diagnosis, isn't it?

23 A. Correct.

24 Q. If you go to the airport, you see a lot of people with  
25 those machines.

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1 A. Including me.

2 Q. Okay. So of all the people who are treated for sleep  
3 apnea, I would expect that there would be very few who would  
4 have the kind of diagnosis that you're talking about as a  
5 result of sleep apnea.

6 A. That's probably true. I don't know if there's any data, I  
7 don't believe there is any data on that. But that's an  
8 interesting point.

9 Q. So this late-life pedophilia, I think we all have different  
10 views of what is late life. Fifty-four doesn't sound like late  
11 life to me.

12 A. Well, actually, I think the term is "later life."

13 Q. Later, okay. Because in this court, I've seen people with  
14 these kinds of charges from age 20 to age 80. And if you ask  
15 me of those what's late life, I would have said 75 and on.  
16 Right? But is there a definitive range for this late life?

17 A. Well, it is frequently stated as happening in the 50s.

18 Q. In the 50s?

19 A. Often stated. There is a related phenomenon which we  
20 haven't even touched on, which may well be relevant, and that  
21 is that when you have any kind of brain dysfunction later in  
22 life, your judgment may be impaired and your self-control may  
23 be impaired and anything can happen. So nurses notice that  
24 senile patients may be overly amorous and so forth. So how  
25 brain dysfunction affects you later in life, it varies from

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1 person to person.

2 Q. So we see that in nursing homes with Alzheimer's patients?

3 A. Exactly.

4 Q. Does the DSM-5 or the four or the three include a diagnosis  
5 on this late-life pedophilia?

6 A. Actually, no. As I mentioned earlier, we really need to  
7 improve that chapter. When I read that, reread it recently, I  
8 thought, this has to be revised. But, you know, science is  
9 always a work in progress. Science is always correcting  
10 itself. And six, DSM-6, will do better, and I'll actually try  
11 to remember to file a suggestion on that point.

12 Q. So you were trained on the one?

13 A. I was trained on one.

14 Q. I was trained on the three, so I guess that makes us both  
15 very old. The one thing that I really need to ask you about is  
16 this business of self-reporting. So many psychiatric disorders  
17 are based on self-reporting. Right?

18 A. Right.

19 Q. So when we say that -- if we have a person who is clearly  
20 engaged in behavior that would be common to somebody who is a  
21 pedophile, when we draw the conclusion that it is late-life  
22 pedophilia, we can only do that based on the self-reporting.

23 A. Correct.

24 Q. We know that there's no record of any such conduct, but we  
25 depend on the person who is evaluated to tell us whether he's

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1 had these instincts before.

2 A. That's true. But then, fortunately, we do have, and I had  
3 in this case, informants like his sister, who, of course, was a  
4 wonderful informant, and other individuals like an ex-wife and  
5 I think father, probably. There were a couple of family  
6 members that I talked with that weren't very insightful, but  
7 the sister was very insightful.

8 Q. Even with people who know a defendant well, wouldn't you  
9 agree that this is not the sort of thing that family members  
10 are usually aware of?

11 I can personally tell you that there's hardly anybody  
12 that ever comes in this courtroom on a charge like this where  
13 it isn't a shock to the family. They come, they describe a  
14 good neighbor, good husband, good father, and they had no idea  
15 that this person was in the basement downloading child  
16 pornography or molesting the little boy next-door. It really  
17 isn't the kind of thing that's out there.

18 A. That's true, that's true. Of course, my overall point of  
19 view is to understand the person --

20 Q. Right.

21 A. -- and not to blame. I'm not sure if the name Benforado  
22 rings a bell, but his book Unfair is so worthwhile, I recommend  
23 it to every lawyer that I can find, including many in my  
24 family.

25 Q. All right. I am told and I have read that there are --

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1 there's a movement in the psychiatric profession that has  
2 judged very harshly the criminal justice approach to the  
3 treatment of pedophilia, that there are a large number of  
4 professionals who believe that this type of behavior should not  
5 be criminalized, and that when we look at what they view as the  
6 draconian penalties, especially in federal court, that we're  
7 going to look back on this 20 years from now and realize that  
8 we've made a very big mistake. I have a feeling that you might  
9 be part of that group of professionals.

10 A. Yeah, absolutely. I've talked with Laura Magnani, who  
11 wrote a book called, Beyond Prisons. She's with the Quakers.  
12 And they are very puzzled about this very problem and would  
13 like to come up with a solution. But they would also say that  
14 punishment for something that is inherent, let's take the  
15 inherent pedophilia, to punish somebody for something that's  
16 inherent and they have really no control over seems immoral.  
17 And I think we need to rethink the criminal justice system. I  
18 don't know if you've read my article, Criminal Injustice.

19 Q. I will read it.

20 A. You read it?

21 Q. I have not read it.

22 A. Oh, you have not read it. And then I've upgraded that.  
23 It's at least more known. And it comes out really at a  
24 revolutionary understanding of human nature, not that I've done  
25 it, but I've read the people who have done the research and



1 done the thinking. I'll be glad to send you something,  
2 actually.

3 Q. Okay. Thank you.

4 A. Be glad to.

5 *THE COURT:* Any further questions?

6 *MR. THORNTON:* Just briefly, if I could, Your Honor.  
7 Thank you.

8 REDIRECT EXAMINATION

9 BY MR. THORNTON:

10 Q. I don't think I'm going over -- well, I might be sort of  
11 going over some of the questions that Judge Kane just asked.

12 So from your investigation or -- I guess investigation  
13 of this case, there was no evidence from anybody that you spoke  
14 to that there was any prior interest in children. Is that  
15 correct?

16 A. That --

17 Q. I'm sorry, let me go over here. There was no indication  
18 from anybody that you spoke to that Jay Reed had a prior  
19 interest in children?

20 A. Yes, we have no history of that whatsoever, and I have a  
21 lot of history.

22 Q. Did his rationalizations or his avoiding admitting exactly  
23 what he did, did that in any way affect your ability to  
24 complete your evaluation?

25 A. No, that's evidence.

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1 Q. And did you ever expect the MRI to show a specific exact  
2 cause for this?

3 A. We didn't know what it was going to show. And I can't be  
4 precise as to what lesion would cause pedophilia, but I'll bet  
5 there is a lesion somewhere, some brain tumor somewhere that  
6 has caused abnormal sexual behavior like that.

7 Q. And there is a lesion on his brain, on Jay's?

8 A. Well, that's the nonspecific MRI abnormality, right.

9 Q. And I guess the final question I had was, what's the  
10 difference between a lesion and a tumor?

11 A. Well, a lesion is anything that is a pathologic focus. A  
12 tumor is a multiplication of cells that may or may not be  
13 malignant and that compress the brain and cause various kinds  
14 of problems.

15 Q. So tumors and lesions are --

16 A. Lesion is the most general term. An infection, like an  
17 abscess, is a lesion if it's specific. But lesion is any focus  
18 of pathology.

19 Q. And just finally, Dr. Silverman, is this your last case  
20 that you have open?

21 A. Yes, it is.

22 Q. And then you're giving up your license after today?

23 A. I am.

24 Q. Okay. Well, congratulations.

25 A. But I'll be writing.

1           MR. THORNTON: Okay. Thank you, Dr. Silverman. I  
2 have no further questions.

3           THE COURT: Anything else for Dr. Silverman?

4           MS. TAYLOR: No, Your Honor. Thank you.

5           THE COURT: Doctor, thank you. It was a pleasure  
6 meeting you. I will look forward to the article.

7           THE WITNESS: Thank you. I'd love to correspond with  
8 you.

9           THE COURT: Thank you.

10          MR. THORNTON: Your Honor, we have no further  
11 witnesses to present other than Mr. Reed. I don't know if the  
12 government has witnesses prior to allocution.

13          THE COURT: Does the government have any witnesses?

14          MS. TAYLOR: If I could have the court's indulgence  
15 for just a moment.

16          THE COURT: Ms. Taylor, do you need a few minutes? We  
17 can take a short recess here.

18          MS. TAYLOR: If we could have just a five-minute  
19 break, that would be great, Your Honor.

20          THE COURT: We'll be in recess.

21          COURTROOM DEPUTY: Court is in recess.

22          (Recess taken.)

23          THE COURT: Ms. Taylor, do you have any witnesses?

24          MS. TAYLOR: We do not, Your Honor.

25          THE COURT: Mr. Thornton, anything else you want to

1 offer on your client's behalf?

2 MR. THORNTON: Yes, Your Honor. I know Mr. Reed would  
3 like to speak, have allocution at the end.

4 Your Honor, we are asking you to vary to a sentence of  
5 no more than the mandatory minimum here of 15 years. And the  
6 reason that we are asking for that variance is pretty much set  
7 out in the sentencing memorandum that we filed about two months  
8 ago.

9 First I would indicate from the testimony today that  
10 there is no evidence of prior contact with children or an  
11 interest in children on behalf of Mr. Reed, though Your Honor  
12 clearly made a good point that people do hide that regularly.  
13 But it would be -- if there were such evidence, it would be  
14 probative, but since there isn't any, I don't think we can even  
15 consider that.

16 Your Honor, we would suggest that the characteristics  
17 of Mr. Reed show that a variance of 15 years is an appropriate  
18 sentence in this matter. Clearly a sentence of 1,080 months is  
19 a death sentence for Mr. Reed. He's not going to live 90 more  
20 years.

21 It's kind of amazing to me that you can even come up  
22 with a sentence from the guideline that exceeds the absolute  
23 maximum. It's like the Voyager spacecraft seems to have left  
24 the complete heliosphere of our galaxy and moved into a range  
25 where you can't even have those sentences.

1           Your Honor, we would suggest that Deb Dallmann's  
2 letter and her testimony here today, the family video, the  
3 character letters attached to the sentencing memorandum all  
4 indicate that Mr. Reed is somebody who is deserving and can  
5 make the best of a variance if Your Honor were to do that for  
6 him. And we have evidence that he can do better and that he  
7 can conform to the rules of society.

8           He's been in Dauphin County and Columbia County Prison  
9 for over three years. He has no writeups, no disciplinary  
10 difficulties whatsoever. And, in fact, he was even put in  
11 charge of the laundry on several occasions at Columbia County  
12 Prison. They move the laundry assignments on and off, but  
13 Mr. Reed had a very good relationship with all the guards up  
14 there, and I know they felt that he did a very good job with  
15 the laundry.

16           As far as his prior record, Your Honor knows that he  
17 only has one prior conviction, a DUI from 1990. All those  
18 things, I think, show well for the characteristics of Jay and  
19 indicate that he can make the best of a variance if Your Honor  
20 will grant him such a variance.

21           His history is also set out in the presentence report  
22 and also Dr. Dattilio's report. He's always been working. He  
23 did go in the Army for a while. He's not a guy who's lying  
24 around, he's a conscientious person who is constantly active.

25           And I think Your Honor knows from the video that the

1 parents made for the court that Mr. Reed is needed at home. I  
2 know that Mom and Dad are certainly older, and 15 years may  
3 not -- they may not be here, but certainly he's needed at home  
4 to help take care of things. And he has, unfortunately,  
5 jeopardized that, and that hurts him to the core.

6 Your Honor, he does have progressive dementia, as  
7 indicated by Dr. Silverman. And, in fact, just my last visit,  
8 it was clear that Jay is forgetting stuff even now. Even  
9 between my visits, he's less and less there and less and less  
10 able to recall things that we've talked about in the past. He  
11 has had the stroke, the diabetes. He has the CPAP, which seems  
12 to be helping him at least with his ability to sleep and  
13 hopefully is giving him the oxygen to his brain that he really  
14 needs.

15 I think all of those things demonstrate what  
16 Dr. Silverman testified to, that there was an atypical switch  
17 here. He wasn't a pedophile, he wasn't a guy who wanted to  
18 have anything to do with children in a sexual way, and suddenly  
19 it occurred, which makes you think that what Dr. Silverman was  
20 testifying to here today is correct, that there is a lesion,  
21 there is some difficulty, something has occurred to him. I  
22 know Jay has not felt right for a long time after the stroke  
23 and his diabetes.

24 Your Honor, the sentence you impose here must be  
25 substantively reasonable, as Your Honor knows, under 3553(a)

1 and not greater than necessary. We would suggest to you that  
2 Jay is unlikely to reoffend, and we spelled that out in the  
3 sentencing memorandum that we filed, that his age, the  
4 sentencing guideline statistics, and also just the plain  
5 opportunity to want to reoffend is very small considering his  
6 age.

7 He's unlikely to be a future danger, mostly because he  
8 wasn't a danger before this, but also because he will be on  
9 supervised release for at least five years after the sentence  
10 is imposed and will have to register under Megan's Law probably  
11 for most of the rest of his life. And even Dr. Dattilio  
12 indicated that he was only a moderate risk of reoffending.

13 Your Honor, Mr. Reed needs treatment, medical  
14 treatment, and we would ask you to suggest either Butner or the  
15 medium security facility at Allenwood, which both have sexual  
16 offender programs, as the place of incarceration. What we ask  
17 you not to do is lock Jay up and throw away the key, and that's  
18 what the guidelines ask for here. They ask you to throw away  
19 the key. They ask you for him to die in prison.

20 But he's being punished in a number of different ways,  
21 not just the physical punishment, not just jail time, he's got  
22 a brother who won't talk to him. More than likely Mom and Dad  
23 aren't going to be here when he gets out. Other inmates will  
24 torture him.

25 And as Deb mentioned, he's going to be very lucky to

1 survive this without significant physical pain from not just  
2 being incarcerated, but from other inmates. And I think Your  
3 Honor is aware of the difficulties that inmates with these type  
4 of offenses have, and that's why we're asking for that specific  
5 location of incarceration.

6 Certainly here the pedophilia is a late-in-life onset,  
7 which we believe is caused by the brain injury, the dysfunction  
8 for Mr. Reed. He's never done it before. There's no  
9 indication that he'll ever do it again. He never distributed  
10 anything. He never shared anything. He never even showed  
11 anything to anyone else.

12 Your Honor, 90 years in this case is greater than  
13 necessary. Mr. Reed is remorseful and redeemable, and we ask  
14 you to give him a sentence less than 90 years, and we would  
15 suggest 15 years, which is the mandatory minimum.

16 *THE COURT:* Does your client wish to speak?

17 *MR. THORNTON:* Yes, Your Honor. Would you like us to  
18 approach the bench?

19 *THE COURT:* You can stay there.

20 *MR. THORNTON:* Stay here.

21 *THE DEFENDANT:* First off, I'd like to thank everybody  
22 for being here and apologize to everybody for my attire and not  
23 being able to shave and stuff like that. It's just -- that's  
24 the way the jails and everything operate.

25 And mostly I wanted to apologize to the family and say



1 how sorry I am for anything that happened. I tried as hard as  
2 I could to make everything good for them, but I went astray,  
3 and I don't know what happened. I don't know where it went  
4 downhill. But I do apologize for everything, and I just hope  
5 that you all forgive me. Thank you.

6 *MR. THORNTON:* We have nothing else, Your Honor.

7 *THE COURT:* Okay. Thank you. Ms. Taylor.

8 *MS. TAYLOR:* Thank you, Your Honor. This is a case,  
9 as the court is aware, that based on the presentence report,  
10 that the guideline range for the base offense level of 46 would  
11 actually call for a natural life sentence but for the statutory  
12 maximums that are imposed in this case with the four counts.  
13 That is what results in the 90-year or the 180-month advisory  
14 guideline range.

15 And that is, as the court knows, what the government  
16 is requesting. We are requesting that the court impose the  
17 1,080-month sentence that the guidelines call for. That is the  
18 statutory maximum on each of the four counts, and we're asking  
19 that the court run those sentences consecutive for the total of  
20 90 years' imprisonment here.

21 What the defense is asking for is just simply -- this  
22 isn't a mandatory minimum case. They're asking for a 15-year  
23 sentence, which is, of course, the mandatory minimum on the  
24 production of child pornography count, and the facts of this  
25 case suggest that it is not a mandatory minimum case.

1           The defendant in this case is a child rapist. He is a  
2 producer of child pornography. There are approximately 200  
3 images that are of the known victims in this case that were the  
4 victims of the molesting at the hands of this defendant and/or  
5 the rapes that the victims suffered. And these victims at the  
6 time of these crimes were ages nine through thirteen.

7           He's also a collector of child pornography. There  
8 were approximately 300 images that constituted child  
9 pornography and one video that showed prepubescent minors that  
10 were performing sex acts. Some of those images included  
11 bondage, urination, oral and anal penetration by adults on  
12 these children, and there were a number of those that were  
13 known series that were identified by NCMEC.

14           But the physical, the physical abuse that the victims  
15 suffered in this case was not enough. He also manipulated the  
16 victims in this case. The way he got them to engage in some of  
17 these acts was by manipulating them, buying them gifts and  
18 giving them money, which certainly suggests the predatory  
19 behavior that Dr. Dattilio indicated in his report that he sees  
20 in the defendant.

21           But one of the reasons this case is not a mandatory  
22 minimum case is because the abuse did not stop when the  
23 defendant got arrested. After he was arrested and  
24 incarcerated, the defendant wrote two letters. One of them was  
25 addressed to one of the minor victims, and one of them was

1 addressed to her grandmother.

2 Now, the defense, earlier in the hearing, talked about  
3 the two obstruction charges, which are Counts 3 and 4 that the  
4 defendant pled to, and indicated that they were not true  
5 obstruction charges and that the letters were more like letters  
6 talking about please don't prosecute me, was the way  
7 Mr. Thornton characterized what Mr. Reed wrote in these  
8 letters.

9 But after raping these little girls, photographing  
10 them, downloading images of commercial child pornography,  
11 getting locked up for those crimes, he then, from the prison,  
12 writes what are absolutely letters that show obstruction and  
13 tampering with witnesses.

14 The letter to the grandmother, which is in an envelope  
15 with his name, Mr. Reed's name and inmate number on it, the  
16 letter has his inmate number on it, just reading the relevant  
17 portion of the letter to the grandmother says: Why do they  
18 have to go? They already gave statements. Don't volunteer  
19 anything extra. And later in the letter it mentions two of the  
20 victims by name and then says, They know I didn't do anything.

21 The letter to the minor victim that the defendant  
22 wrote from jail says, at least the relevant part says, I sure  
23 will be glad when this is all over so I can be with you again.  
24 And the last line says, I hope you and the name of one of the  
25 other victims are not talking to anyone about this case. He

1 couldn't even leave these children alone once he was locked up  
2 in jail.

3 Now, the court just heard from Dr. Silverman, the  
4 defense's expert, and I won't spend a lot of time on arguing  
5 about his opinions, but obviously he presents what I think  
6 is -- could be characterized as a fringe opinion about  
7 pedophilia and these types of cases, discussing later-in-life  
8 pedophilia, which is a concept that I don't believe --  
9 certainly he acknowledged does not exist in the DSM-5, which is  
10 the current edition.

11 He talked about the defendant having brain dysfunction  
12 which is what caused him to engage in these criminal  
13 activities, but he also acknowledged on cross-examination that  
14 what he was calling brain dysfunction may be something or may  
15 be nothing.

16 He also acknowledged that a lot of the information  
17 both in his report and Dr. Dattilio's was based on  
18 self-reporting. And his diagnosis of neurocognitive disorder  
19 was, I would submit to the court, completely at odds with the  
20 detailed history that you see in Dr. Dattilio's report.

21 And Dr. Silverman's opinion that the defendant should  
22 not be incarcerated because he should not be punished for  
23 something that is simply inherent and that what the criminal  
24 justice system is doing is immoral, I'll just leave that for  
25 the court's thoughts.

1           A sentence of 90 years in this case, Your Honor, would  
2 be appropriate under any consideration of the 3553(a) factors  
3 and would be in line with other cases that have been sentenced  
4 in this court, and I outlined some of those for the court in  
5 the memorandum that we filed yesterday. But the one I wanted  
6 to highlight for the court was *United States v. Daniel Curran*.

7           That was actually a case that was presided over by  
8 Judge Caldwell, and in that case, he sentenced the defendant,  
9 Daniel Curran to 70 years, 20 years less than what the  
10 government is asking for in this case, but the 70 years in  
11 Mr. Curran's case was the statutory maximum that was available  
12 to Judge Caldwell in that case. So we asked for the statutory  
13 maximum in that case as we are doing here.

14           The Daniel Curran case has a lot of similarities to  
15 Mr. Reed's case, which is why I bring it to the court's  
16 attention. In Mr. Curran's case, the defendant also had no  
17 prior convictions and no history of sexual abuse, and the  
18 United States could present to the court in that case no  
19 evidence that the images in that case had been distributed.

20           That's not to say they hadn't. Just like in  
21 Mr. Reed's case, we simply don't know. There is no evidence  
22 about whether they have or have not been distributed, just like  
23 there is no evidence about whether Mr. Reed, and in  
24 Mr. Curran's case, the same there, whether Mr. Reed has or has  
25 not been involved with any of these similar activities prior to

1 when he was caught at the age of 54.

2 In Mr. Curran's case, he also was sexually abusing,  
3 hands-on sexual abuse of a nine-year-old minor victim, but in  
4 his case, there was only one victim as opposed to the multiple  
5 victims we know exist in Mr. Reed's case. He also documented  
6 that abuse by photographing and videoing the minor's genitals,  
7 similar to Mr. Reed's. And he also attempted to obstruct  
8 justice just like Mr. -- or in a similar way that Mr. Reed did.

9 Based on those facts that are both similar to  
10 Mr. Curran's case that we find in Mr. Reed's case, the  
11 government in that case asked for a statutory maximum sentence  
12 where the counts were run consecutively. And Judge Caldwell  
13 did, in fact, sentence Mr. Curran in that fashion, which led to  
14 the 70-year sentence there, and that is what we are requesting  
15 in Mr. Reed's case, a maximum sentence on each count for the  
16 90-year sentence.

17 I do have the very few selection of images that we  
18 presented to Dr. Silverman in this case that we marked as  
19 Government's Exhibit 7, if the court would like to review them.  
20 I think there are only ten.

21 But finally, Your Honor, the victims in this case  
22 clearly have been robbed of their innocence, and the victims  
23 will suffer for a lifetime because of the abuse that was meted  
24 out by Jay Reed. To protect these victims and to protect the  
25 community and to keep this man from victimizing any other

1 little girls in the future, the United States is requesting  
2 that the court impose a maximum sentence of 90 years.

3 The defendant's sister made a very candid and  
4 compelling statement to the court earlier today, and one of the  
5 things she said really resonated with me. She indicated that  
6 Mr. Reed's friends had said to her that Mr. Reed always had  
7 their backs. Well, we're asking the court to have the backs of  
8 the victims and sentence Mr. Reed to 90 years.

9 *THE COURT:* Thank you, counsel. I don't have to tell  
10 you these are difficult cases. They're difficult for the  
11 lawyers, for the court, and I know how difficult they are for  
12 the family. I have not seen a family come before the court on  
13 a case like this who didn't come here absolutely shocked at the  
14 nature of the penalties that are potential here and also  
15 shocked at some of the conduct that they have heard their loved  
16 one engaged in.

17 Most of the people who engage in child pornography  
18 cases are productive members of society in so many other  
19 places. They're good neighbors, they're good friends. It's  
20 something that the family and the friends just really can't  
21 understand and, quite frankly, none of us really understand,  
22 either, but here we are.

23 There is a guideline range of 1,080 months. And as  
24 counsel has noted, the maximum penalty under the statute is  
25 life, and the guideline range caps that because of the

1 statutory provisions.

2           On Count 1, the statutory provision is a minimum 15,  
3 maximum 30 years. Count 2, no minimum, but a maximum of 20  
4 years. Count 3, a maximum of 20 years. And Count 4, a maximum  
5 of 20 years. The court is called upon to fashion a sentence  
6 that's sufficient but not greater than necessary to meet  
7 sentencing objectives and to weigh the characteristics of the  
8 defendant with the nature and circumstances of the crime that  
9 brings him before the court.

10           As counsel have noted, the defendant is now in his  
11 late 50s. He's in poor health. He suffers from diabetes,  
12 sleep apnea. But he's a person who has enjoyed a good family  
13 upbringing, adequate education, and someone who has been  
14 employed over a lifetime and even served in the military. Up  
15 until this offense, he was relatively crime-free for most of  
16 his adult years with only a DUI conviction.

17           So the court must measure this man against the  
18 reprehensible acts that bring him before the court. In  
19 evaluating the defendant's conduct, of course, the court has to  
20 weigh the willfulness of what he has done, and Dr. Silverman's  
21 testimony is very important in doing that.

22           I have listened very carefully, and, quite frankly, I  
23 find much of the testimony that I heard fanciful and really not  
24 based in science. Were he here on a Daubert motion, I would  
25 likely reject the conclusions that he's offered to the court.



1 I do find that the defendant acted willfully and that he  
2 violated four young victims and left them with lifelong  
3 consequences as a result of his conduct.

4 He's admitted producing pornographic images of  
5 prepubescent children. He's admitted possessing a large case  
6 of child pornography, including images identified by the Center  
7 for Missing and Exploited Children. And, worst of all, he's  
8 admitted violating four children between the ages of nine and  
9 thirteen. And two of these children were in his care, and he  
10 not only violated them physically, but he violated their trust  
11 and took advantage of the opportunity that was placed in him.

12 I believe that a sentence below the recommended  
13 guideline range is sufficient to punish, deter, promote respect  
14 for the law, and reflect the seriousness of the defendant's  
15 conduct.

16 I find that on Count 1, only a sentence of the maximum  
17 would reflect guideline objectives -- or sentencing objectives.  
18 That would be the 30 years. This involves four victims. Count  
19 2, countless victims on the pornography count, and that maximum  
20 of a 20-year sentence is appropriate under the circumstances.  
21 On Counts 3 and 4, the tampering counts, I believe that a  
22 ten-year sentence would be sufficient but not greater than  
23 necessary to promote sentencing objectives.

24 Pursuant to the Sentencing Reform Act of 1984, it's  
25 the judgment of the court that the defendant, Jay Eugene Reed,

1 is hereby committed to the custody of the Bureau of Prisons to  
2 be imprisoned for a term of 840 months. This term consists of  
3 360 months on Count 1, 240 months on Count 2, 120 months on  
4 Count 3, and 120 months on Count 4, all to be served  
5 consecutively.

6 The court finds that the defendant has the ability to  
7 pay a fine. It's ordered that he pay to the clerk, U.S.  
8 District Court, a sum of \$1400 consisting of special  
9 assessments totaling \$400 due immediately and a fine of \$1,000  
10 on Count 1.

11 During the term of imprisonment, the balance of the  
12 restitution is payable every three months in an amount after a  
13 telephone allowance equal to 50 percent of the funds deposited  
14 into the defendant's inmate trust fund account.

15 In the event the restitution is not paid in full prior  
16 to the commencement of supervised release, the defendant shall,  
17 as a condition of supervised release, satisfy the amount due in  
18 monthly installments of no less than \$35 to commence 30 days  
19 after release from confinement.

20 On release from imprisonment, the defendant shall be  
21 placed on supervised release for a term of life. This term  
22 consists of life on each of Counts 1 and 2 and terms of three  
23 years on each of Counts 3 and 4, all to be served concurrently.

24 Within three days of release from the custody of the  
25 Bureau of Prisons, the defendant shall report in person to the

1 probation office in the district to which he is released.

2           While on supervised release, the defendant shall not  
3 commit any federal, state, or local crime and shall not possess  
4 a dangerous weapon.

5           The defendant shall comply with the standard  
6 conditions that have been adopted by the court and with the  
7 following additional conditions:

8           You must cooperate in the collection of DNA as  
9 directed by the probation officer. You must not unlawfully  
10 possess a controlled substance. You must refrain from any  
11 unlawful use of controlled substances. You must submit to one  
12 drug test within 15 days of commencing supervision and to at  
13 least two periodic drug tests thereafter as determined by the  
14 court.

15           You must comply with the requirements of the Sex  
16 Offender Registration and Notification Act as directed by the  
17 probation officer, the Bureau of Prisons, or any state sex  
18 offender registration agency in the location where you reside,  
19 work, are a student, or were convicted of a qualifying offense.

20           You must participate in a mental health treatment  
21 program and follow the rules and regulations of that program.  
22 The probation officer, in consultation with the treatment  
23 provider, will supervise your participation in the program,  
24 which may include an evaluation and completion of any  
25 recommended treatment. You must take all mental health

1 medications that are prescribed by your treating physician.

2           You must not incur new credit charges or open  
3 additional lines of credit without the approval of the  
4 probation officer. You must provide the probation officer with  
5 access to any requested financial information and authorize the  
6 release of any financial information. The probation officer  
7 may share financial information with the United States  
8 Attorney's Office.

9           You shall apply all monies received from income tax  
10 refunds, lottery winnings, judgments, and/or other anticipated  
11 or unexpected financial gains to the outstanding court-ordered  
12 financial obligation.

13           If the judgment imposes a financial penalty, you must  
14 pay the financial penalty in accordance with the schedule of  
15 payments. You must also notify the court of any changes in  
16 economic circumstances that may affect the ability to pay the  
17 financial penalty.

18           You must submit your computers or other electronic  
19 communications or data storage devices or media to a search.  
20 You must warn any other people who use these computers or  
21 devices capable of accessing the Internet that the devices may  
22 be subject to searches pursuant to this condition.

23           A probation officer may conduct a search pursuant to  
24 this condition only when reasonable suspicion exists that there  
25 is a violation of a condition of supervision and that the

1 computer or device contains evidence of this violation. Any  
2 search will be conducted at a reasonable time and in a  
3 reasonable manner.

4           You must allow the probation officer to install  
5 computer monitoring software on any computer you use. To  
6 ensure compliance with the computer monitoring condition, you  
7 must allow the probation officer to conduct initial and  
8 periodic unannounced searches of any computers subject to  
9 computer monitoring.

10           These searches shall be conducted for the purposes of  
11 determining whether the computer contains any prohibited data  
12 prior to the installation of the monitoring software, to  
13 determine whether the monitoring software is functioning  
14 effectively after its installation, and to determine whether  
15 there have been attempts to circumvent the monitoring software  
16 after its installation. You must warn any other people who use  
17 these computers that the computers may be subject to searches  
18 pursuant to this condition.

19           You must participate in a sex offense specific  
20 treatment program and follow the rules and regulations of that  
21 program. The probation officer will supervise your  
22 participation in the program that may include an evaluation and  
23 completion of any recommended treatment.

24           You must participate in plethysmograph testing as part  
25 of the required participation in a sex offense specific

1 assessment and/or treatment. You must participate in visual  
2 response testing as part of the required participation in a sex  
3 offense specific assessment or treatment.

4           You must submit to periodic polygraph testing at the  
5 discretion of the probation officer as a means to ensure that  
6 you're in compliance with the requirements of your supervision  
7 or treatment program.

8           You must not have direct contact with any child you  
9 know or reasonably should know to be under the age of 18, not  
10 including your own children, without the permission of the  
11 probation officer. If you do have any direct contact with any  
12 child you know or reasonably should know to be under the age of  
13 18, not including your own children, without the permission of  
14 the probation officer, you must report this contact to the  
15 probation officer within 24 hours.

16           Direct contact includes written communication,  
17 in-person communication, or physical contact. Direct contact  
18 does not include incidental contact during ordinary daily  
19 activities in public places.

20           You must not go to or remain at any place where you  
21 know children under the age of 18 are likely to be, including  
22 parks, schools, playgrounds, and child care facilities. You  
23 must not go to or remain at a place for the primary purpose of  
24 observing or contacting children under the age of 18.

25           You must not communicate or otherwise interact with

1 the victims or any member of their families, either directly or  
2 through someone else, without first obtaining the permission of  
3 the probation officer.

4 And you must submit your person, house, property,  
5 residence, vehicle, papers, computers, other electronic  
6 communications or data storage devices or media or office to a  
7 search conducted by the U.S. probation officer.

8 Failure to submit to a search may be grounds for  
9 revocation of release. You must warn any other occupants that  
10 the premises may be subject to searches pursuant to this  
11 condition.

12 The probation officer may conduct a search under this  
13 condition only when reasonable suspicion exists that you have  
14 violated a condition of supervision and that the areas to be  
15 searched contain evidence of this violation. Any search must  
16 be conducted at a reasonable time and in a reasonable manner.

17 Mr. Reed, you do have a right to appeal your  
18 conviction if you believe that your guilty plea was somehow  
19 unlawful or involuntary or if you think there was some other  
20 fundamental defect in the proceedings that you did not waive by  
21 entering a guilty plea. You also have a statutory right to  
22 appeal your sentence under certain circumstances, particularly  
23 if you think the sentence is contrary to law.

24 With few exceptions, any Notice of Appeal must be  
25 filed within 14 days after sentence is imposed on you. If

1 you're not able to pay the costs of an appeal, you may ask the  
2 court for leave to appeal in forma pauperis, and if you  
3 request, the Clerk of Court will prepare and file a Notice of  
4 Appeal on your behalf.

5 Counsel, is there anything else for the record?

6 MR. THORNTON: Would Your Honor recommend Butner or  
7 Allenwood medium as a place of incarceration?

8 THE COURT: Mr. Thornton, are you aware whether Butner  
9 is still being used for sex offender treatment? The last I  
10 heard, it was not.

11 MR. THORNTON: As far as I heard recently it was, but  
12 I have not heard in the last three or four months.

13 THE COURT: Ms. Taylor may know.

14 MS. TAYLOR: Your Honor, there are -- the last thing  
15 we've been told, within the last six months by the prison, that  
16 there are a number of facilities that are being used. One of  
17 them is out in Arizona. I'm not sure that Butner is one of  
18 them, but the Bureau of Prisons is definitely going to  
19 designate Mr. Reed --

20 THE COURT: I would assume that you would want the  
21 defendant to be housed as close to his family as possible,  
22 provided that there would be the sex offender program.

23 MR. THORNTON: Allenwood is definitely one of those  
24 facilities.

25 THE COURT: Allenwood? Okay.



1           MR. THORNTON: Butner just has the dual treatment  
2 possibilities because they also have the hospital.

3           THE COURT: Right.

4           MR. THORNTON: But Allenwood would be the closest to  
5 the family.

6           THE COURT: Okay. So I think Ms. Taylor is right in  
7 that regard, that the Bureau of Prisons will certainly do a  
8 medical evaluation immediately and will try to find that place.  
9 If it's Butner, I have no problem recommending it.

10          MR. THORNTON: If Your Honor would recommend Allenwood  
11 medium as the primary place.

12          THE COURT: All right. Ms. Taylor, anything else?

13          MS. TAYLOR: Not from the government, Your Honor.

14          THE COURT: All right. Thank you, counsel. We'll be  
15 in recess.

16          *(Whereupon, the proceedings were concluded at 4:05 p.m.)*  
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 31st day of December, 2018.

**/s/ Lori A. Shuey**

Lori A. Shuey  
Federal Certified Realtime Reporter